FILE COPY

No. 896

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

JUNIOR LEE WILLIAMS, *Petitioner*

v.

H. E. MOORE, WARDEN, TEXAS DEPARTMENT OF CORRECTIONS, *Respondent*

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

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Petitioner, Junior Lee Williams, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled cause on January 5th, 1959.

Citations to Opinions Below

The memorandum opinion of the United States District Court for the Southern District of Texas is unreported and is printed in the accompanying record certified by the

Clerk of the United States Court of Appeals, Fifth Circuit (R. p. 81). The opinion of the United States Court of Appeals, Fifth Circuit is in the certified copy of the record, p. 108, has not yet been officially reported.

Jurisdiction

The judgment of the United States Court of Appeals, Fifth Circuit, was entered January 5th, 1959 (R. p. 108). Rehearing was denied February 5th, 1959, (R. p. 122).

The jurisdiction of this Court is invoked under 28 *U.S.C.A.*, Sec. 1254(1).

1.

Where the various stays of execution, the first of which was not at the instance of Petitioner, have expired, and there is no Texas Statute authorizing any Court to resentence Petitioner to be electrocuted, whether a resentence by the District Court of Wharton County, Texas, is arbitrary and denies to Petitioner that due process of law and that equal protection of the laws as is guaranteed to Petitioner by the XIV Amendment to the Constitution of the United States.

2.

Where the State Court of last resort has ruled, "It is a familiar and well settled rule that Penal Statutes are to be construed strictly and not extended by implications, intendments, analogies or equitable considerations. Offenses must be plainly written and defined by Legislature, Courts not being permitted to supply what Legislature has from inadvertence or otherwise omitted to include within express provision of Penal Law." And the Courts fail to ap-

ply such rule to facts in Petitioner's case, whether such action deprives Petitioner of due process of law and equal protection of laws as is guaranteed to Petitioner by the XIV Amendment to the Constitution of the United States.

3.

Whether the Federal Court, where no Federal Statute is involved, can refuse to follow the law as announced by the highest Court of a State, in one phase of Petitioner's case, and follow such State's rule in another phase of Petitioner's case without depriving Petitioner of due process of law and equal protection of laws as is guaranteed to him by the XIV Amendment to the United States Constitution.

Statutes Involved

The Statutory provisions involved are Articles 805 and 806 of the Code of Criminal Procedure of the State of Texas.

They are printed in Appendix A, infra, pages 9-10.

Statement

Having exhausted all of his remedies in the State Court, Petitioner, Junior Lee Williams, on the 20th day of December, 1957, filed a Petition for Writ of Habeas Corpus against H. E. Moore, Warden, Texas Department of Corrections in the District Court of the United States for the Southern District of Texas, Houston Division. (Tr. 3-11).

The jurisdiction of the District Court was invoked pursuant to 28 U.S.C.A., Sections 2241-2254, as a Civil action under the Constitution and laws of the United States, viz., the XIV Amendment of said Constitution.

In due time Respondent filed his answer (Tr. 27-33) on the 18th day of January, 1958.

March 10th, 1958, the Court declined to grant the Writ of Habeas Corpus (Tr. 98-99-100). March 21st, 1958, Petitioner moved to reconsider and amend the order of the Court dated March 10th, 1958, (Tr. 100-101), on the same day the Court overruled said Motion.

April 4th, 1958, Petitioner filed Notice of Appeal and his Appeal Bond.

The United States Court of Appeals for the Fifth Circuit affirmed the action of the District Court, by an opinion dated January 5th, 1959, (Tr. 108-117). February 5th, 1959, Petitioner's Motion for Rehearing was denied. (Tr. 122).

Reasons For Granting The Writ

1.

There is a conflict between the decision of the Court below in the instant case and the cases of Ex Parte: Cross 146 U.S. 271, 36 L. Ed. 969, and *Craemer v. State*, 168 U.S. 124, 42 L. Ed. 407.

This conflict with the two applicable aforementioned decisions of the Supreme Court is present because the decision in the instant case does not recognize the rule of law announced in Ex Parte Cross, (supra), "the postponements were rendered necessary by reason of delays occasioned by the acts of the condemned in his own interest, and the position that he thereby became entitled to be set at large cannot be sustained."

There was an applicable Statute in the Cross case and the stay was at petitioner's instance.

In the instant case the first stay was not at the instance of petitioner and there is no applicable Statute.

The decision of the Court of Appeals does not recognize the rule of law announced in *Craemer v. State*, (supra), wherein the Supreme Court held, "The appointment of another day for the execution of the death penalty, in accordance with a Statute, when the day first appointed has passed during the pendency of an Appeal, is not in denial of due process of law or in violation of the Federal Constitution."

True, the instant case involves a stay of execution, but the first stay was not at the instance of petitioner and in the instant case there is no applicable Statute.

We believe the rule announced by the Supreme Court in Craemer is applicable and of sufficient latitude to controlling here. The plain language, "in accordance with a Statute", means what it says.

In the instant case petitioner cannot be resentenced, "in accordance with a Statute", because there is no Statute.

2.

Another question presented by the instant case is important because the decision of the Court below is in conflict with *Erie R. Co. v. Thompkins*, 304 U.S. 64-78, 82 L. Ed. 1189, wherein the Supreme Court ruled "that the Federal Courts will follow the rulings of the Court of last resort on questions of State law."

In *Ratcliff v. State*, 289 S.W. 1072, and in *Eu inks v. State*, 203 S.W. 2d 339, strict construction in criminal cases is the law of the State.

In Ratcliff (supra), "Penal Statutes are to be construed strictly and not extended by implications, intendments, analogies, or equitable considerations. Offenses must be plainly written and defined by Legislature, Courts not being permitted to supply what the Legislature has from inadvertence or otherwise omitted, to include within express provisions of Penal Law." Eubanks (supra), says, "Penal Statutes must be strictly construed and the more severe the penalty, the more rigid the construction."

The holding of the Court below is in irreconcilable conflict with the holding of the Supreme Court in *Vieneck v. United States*, wherein it is said: "The unambiguous words of a Statute which imposes criminal penalties are not to be altered by judicial construction, so as to punish one not otherwise within its reach, however deserving of punishment his conduct may be."

It is the rule not only in Texas, but also in the Federal Courts that Criminal Statutes must be strictly construed, now with respect to Articles 805 and 806 C.C.P., of Texas, the aforesaid rule was not followed.

3.

The third question set forth is important and involves the right as to whether a Federal Court can follow the rule announced by the Court of last resort in a State in one phase of Petitioner's case and wholly disregard it in another phase of the same case without depriving petitioner of due process and equal protection as guaranteed by the XIV Amendment to the United States Constitution.

The decision of the Court below is in conflict with the holding of the Supreme Court in *Brinkerhoof-Faris Trust*

Savings Co. v. Hill, 281 U.S. 673; 50 S. Ct. 45; 74 L. Ed. 1107, "That a violation of the due process clause may be accomplished by the State Judiciary in the course of construing an otherwise valid State Statute; the Federal guaranty of due process extends to State action through its judicial as well as through its Legislative, Executive or Administrative, branch of government.

Conclusion

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

_____

Counsel for Petitioner

Date_____

APPENDIX A

28 U.S.C.A. 1254. Courts of Appeals—Certiorari—cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By Writ of Certiorari granted upon the petition of any party to any Civil or Criminal case, before or after rendition of judgment or decree.

ART. 805 ESCAPE AFTER SENTENCE

If the condemned escape after sentence and before his delivery to the warden, and be not rearrested until after the time fixed for execution, any person may arrest and commit him to the jail of the county in which he was sentenced; and thereupon the court by whom the condemned was sentenced, either in term time or vacation, on notice of such arrest being given by the sheriff, shall again appoint a time for the execution, not less than thirty days from such appointment, which appointment shall be by the clerk of said court immediately certified to the warden of the State Penitentiary and such clerk shall place such certificate in the hands of the sheriff, who shall deliver the same, together with the warrant aforesaid and the condemned person to the warden, who shall receipt to the sheriff for the same and proceed at the appointed time to carry the sentence of death into execution as hereinabove provided. Id.

ART. 806 ESCAPE FROM PENITENTIARY

If the condemned person escape after his delivery to the warden, and be not retaken before the time appointed for his execution, any person may arrest and commit him to the State Penitentiary whereupon the warden shall

certify the fact of his escape and recapture to the court in which sentence was passed; and the court, either in term time or vacation, shall again appoint a time for the execution which shall not be less than thirty days from the date of such appointment; and thereupon the clerk of such court shall certify such appointment to the warden, who shall proceed at the time so appointed to execute the condemned, as hereinabove provided. The sheriff or other officer or other person performing any service under this and the preceding Article shall receive the same compensation as is provided for similar services under the provisions of Articles 1029 or 1030 of the Code of Criminal Procedure. Id.

XIV AMENDMENT U. S. CONSTITUTION

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Certificate of Service

Copies of this brief have been deposited in the United States Mail at Houston, Texas, and addressed to Counsel for Respondent at Austin, Texas, postage prepaid.

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Attorney for Petitioner